

01
02
03
04
05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 MICHAEL FRANCIS MOYNIHAN, JR.,)
08 Plaintiff,) CASE NO. C11-1836-JCC-MAT
09 v.)
10 KEEFE COMMISARY NETWORK,) REPORT AND RECOMMENDATION
11 Defendant.)
12 _____)

13 This matter comes before the Court *sua sponte*. The Clerk of Court informed *pro se*
14 plaintiff Michael Francis Moynihan, Jr., who at the time appeared to be incarcerated in
15 Snohomish County Jail, that his application to proceed *in forma pauperis* (“IFP”) was deficient.
16 (Dkt. 4.) Mr. Moynihan did not respond to the Clerk’s IFP-deficiency letter, instead
17 requesting in November 2011 to have all deadlines stayed in his many cases in the Western
18 District of Washington because of his difficulty in accessing legal records. (Dkt. 5.) He did
19 not discuss why lack of access to legal files would prevent him correcting an IFP deficiency; he
20 did, however, provide a new mailing address that, coupled with returned mail, suggests he is no
21 longer incarcerated in Snohomish County Jail and is living in a multi-occupancy home in North
22 Bend. The Court recommends **DENYING** as moot Mr. Moynihan’s request to stay this action

01 (Dkt. 5) because, having reviewed Mr. Moynihan's complaint, the Court recommends
02 **DISMISSING** this matter without prejudice as duplicative of the complaint in *Moynihan v.*
03 *Keefe Commissary Network*, C11-1830-JCC-MAT (W.D. Wash., filed November 1, 2011)
04 (hereinafter "*Keefe I*").

05 In *Keefe I*, Mr. Moynihan brings the same Racketeering Influenced and Corrupt
06 Organizations ("RICO") Act claims against the same defendant as in the present action. The
07 only difference between the complaint in *Keefe I* and the complaint in the present action is that
08 Mr. Moynihan appears to have pruned out clearly irrelevant assertions and changed the citation
09 to an inapplicable statute that refers to the authority of federal district courts. *Keefe I* is before
10 the same district judge and magistrate judge as the present action. Allowing the present action
11 to proceed simultaneously with *Keefe I* would therefore waste judicial resources and potentially
12 cost Mr. Moynihan twice the filing fees for no good reason. No amendment of Mr.
13 Moynihan's complaint will cure the duplicative nature of his present action. See *Lucas v.*
14 *Dep't of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam) (holding that a *pro se*
15 litigant should be afforded the opportunity to amend the complaint unless "it is absolutely clear
16 that no amendment can cure the defect"). If the two actions somehow differ, Mr. Moynihan's
17 rights are protected by moving to amend his complaint in *Keefe I*. A proposed order is
18 attached.

19 DATED this 17th day of January, 2012.

20 

21 Mary Alice Theiler
22 United States Magistrate Judge